SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3511-14T1

ALBERT J. FIELDS, JR.,

Plaintiff-Appellant,

v.

SALEM COUNTY VOCATIONAL TECHNICAL SCHOOL and MARIA ALLEVA,

Defendants-Respondents.

Argued September 15, 2016 – Decided January 19, 2017

Before Judges Hoffman and Whipple.

On appeal from Superior Court of New Jersey, Chancery Division, Salem County, Docket No. C-10-14.

Arthur J. Fields, Jr., appellant, argued the cause pro se.

Mark G. Toscano argued the cause for respondents (Comegno Law Group, P.C., attorneys; Mr. Toscano, Caitlin Pletcher, and Brandon R. Croker, on the brief).

PER CURIAM

Plaintiff Albert J. Fields, Jr. appeals from a November 21, 2014 Chancery Division order dismissing with prejudice his

complaint asserting claims of breach of contract and violations of the Consumer Fraud Act (CFA), N.J.S.A. 56:8-1 to -204. Plaintiff also appeals from a January 9, 2015 order denying his motion for reconsideration. For reasons that follow, we affirm the November 21, 2014 order, and dismiss plaintiff's appeal of the January 9, 2015 order.

We discern these facts from the motion record. Defendant Salem County Vocational Technical School District (the School) is a nonprofit public school district offering career and technical education programs. Defendant Maria Alleva works as the adult admissions coordinator for the School. Plaintiff attended the Medical Assistant/Multi-Skilled Technician Program offered by the School. The program consisted of three phases: an instructional phase, offered by the School; basic life support certification, available through the Red Cross; and a clinical externship, provided by outside businesses.

Prior to enrolling in the program, plaintiff attended an introductory seminar. Alleva conducted the seminar and repeatedly informed attendees of the need to disclose their criminal histories. Because externship sponsors do not accept students with criminal histories, all students must agree to the release of their criminal background checks.

During an entrance interview, Alleva asked plaintiff if he had a criminal background. He responded he did not. Plaintiff later signed several documents confirming he "disclosed any required personal information to the school" and that he "did not have a criminal background and underst[ood] that failure to disclose any relevant information may result in removal from the program without refund."

After completing the instructional phase, plaintiff sought an externship with the Salem County Correctional Facility (the Facility). Plaintiff signed an externship application and again acknowledged he would "forfeit the externship placement opportunity without refund" if he could not satisfy the requirements of the externship. The Facility performed a background check on plaintiff and discovered not only plaintiff's criminal history, but that plaintiff had recently been incarcerated at the Facility. Because plaintiff's criminal history prevented him from completing his externship, the School removed plaintiff from the program.

On August 7, 2014, plaintiff filed his complaint alleging breach of contract and CFA violations. In lieu of an answer, defendants moved to dismiss for failure to plead a cause of action upon which relief could be granted, pursuant to Rule 4:6-2(e). After reviewing the motion papers and entertaining oral argument,

the trial judge found the CFA's definition of "person" did not include defendants and that plaintiff had not pled an "ascertainable loss." Thus, the judge dismissed plaintiff's complaint with prejudice. The judge also dismissed plaintiff's breach of contract claim because plaintiff had signed documents permitting his removal from the program under the circumstances. After the judge denied plaintiff's motion for reconsideration, he filed this appeal.

We commence our review with a statement of the standards that guide our analysis. In considering a motion to dismiss under Rule 4:6-2(e), courts search the allegations of the pleading in depth and with liberality to determine "whether a cause of action is 'suggested' by the facts." Printing Mart-Morristown v. Sharp Elecs. Corp., 116 N.J. 739, 746 (1989) (quoting Velantzas v. Colgate-Palmolive Co., 109 N.J. 189, 192 (1988)). We must therefore determine "whether the fundament of a cause of action may be gleaned even from an obscure statement of claim, opportunity being given to amend if necessary." Ibid. (quoting Di Cristofaro v. Laurel Grove Mem'l Park, 43 N.J. Super. 244, 252 (App. Div. 1957)). A pleading should be dismissed if it states no basis for relief and discovery would not provide one. Camden Cty. Energy Recovery Assocs., L.P. v. N.J. Dep't of Envtl. Prot., 320 N.J. Super. 59, 64-65 (App. Div. 1999), aff'd o.b., 170 N.J. 246 (2001).

We review dismissal of a complaint de novo, applying the same standard as the trial court. Frederick v. Smith, 416 N.J. Super. 594, 597 (App. Div. 2010), certif. denied, 205 N.J. 317 (2011).

Plaintiff's complaint alleges the School violated the CFA, which prohibits a "person" from using fraud or deceptive practices in advertising or sales. N.J.S.A. 56:8-2. The CFA specifically defines a "person" as a "natural person or his legal representative, partnership, corporation, company, trust, business entity or association, and any agent, employee, salesman, partner, officer, director, member, stockholder, associate, trustee or cestuis que trustent thereof." N.J.S.A. 56:8-1(d).

Public entities have consistently been excluded from the definition of "person" under the CFA. See Ramapo Brae Condo. Ass'n, Inc. v. Bergen Cty. Hous. Auth., 328 N.J. Super. 561, 575 (App. Div. 2000) ("[I]t would be contrary to the expressed policies of the Tort Claims Act if we were to conclude that [a public entity] could be held responsible under the Consumer Fraud Act."), aff'd o.b., 167 N.J. 155 (2001); see also Barry v. N.J. State Highway Auth., 245 N.J. Super. 302, 307 (Ch. Div. 1990) (finding CFA did not apply to a public utility because the legislature did not intend the Act to apply to an entity already supervised and regulated by an agency of the State).

The School is an educational public entity organized under N.J.S.A. 18A:54-1 et seq. Thus, the CFA does not apply. Further, plaintiff sued defendant Alleva, an employee of the district, in her official capacity. As an extension of the School, the CFA does not include Alleva under its definition of "person." Thus, the judge correctly ruled defendants may not be sued under the CFA.

Additionally, to succeed on a CFA claim, a plaintiff must allege an ascertainable loss of money or property as required by the CFA. N.J.S.A. 56:8-19; Gonzalez v. Wilshire Credit Corp., 207 N.J. 557, 576 (2011); Thiedemann v. Mercedes-Benz USA, LLC, 183 N.J. 234, 246-47 (2005) (quoting Weinberg v. Sprint Corp., 173 N.J. 233, 237 (2002)). "An ascertainable loss under the CFA is one that is 'quantifiable or measurable,' not 'hypothetical or illusory.'" D'Agostino v. Maldonado, 216 N.J. 168, 185 (2013) (quoting Thiedemann, supra, 183 N.J. at 248).

The record shows that a third party paid $4,000 on plaintiff's behalf and plaintiff failed to pay the $350 remaining balance on his tuition. Thus, plaintiff did not suffer any loss of money or property as required under the CFA.

Because the CFA does not apply to defendants and because plaintiff has not shown an ascertainable loss, plaintiff cannot allege any facts to sustain a viable cause of action under the

CFA. Thus, the motion judge properly dismissed plaintiff's CFA claim with prejudice without allowing plaintiff to submit an amended complaint.

The record similarly demonstrates no basis for plaintiff's breach of contract claim. Prior to enrolling with the program, plaintiff signed numerous statements and certifications acknowledging the School's right to remove him if he had a criminal record. The agreements also stated that if removed, plaintiff would not be entitled to a refund. Because plaintiff falsely certified he did not have a criminal record, the School removed him from the program. Thus, the motion judge properly dismissed plaintiff's breach of contract claim with prejudice.

Finally, we address plaintiff's challenge to the judge's denial of his motion for reconsideration. When appealing from a motion for reconsideration, the petitioner must include the transcript of the oral argument if it includes the judge's reasoning. Pressler & Verniero, Current N.J. Court Rules, cmt. 2 on R. 2:5-3 (2017) (citing Newman v. Isuzu Motors Am., 367 N.J. Super. 141, 144-45 (App. Div. 2004); Kubiak v. Robert Wood Johnson Univ. Hosp., 332 N.J. Super. 230, 239 (App. Div. 2000)). "Failure to provide the complete transcript may result in dismissal of the appeal or at least a separable portion thereof." Ibid. (citing Cipala v. Lincoln Tech. Inst., 179 N.J. 45, 55 (2004)).

Plaintiff failed to provide a copy of the transcript from the January 9, 2015 hearing on his motion for reconsideration. Because the court's order denied plaintiff's motion for "reasons on record," plaintiff was required to provide a transcript from the hearing. Because plaintiff failed to do so, we dismiss plaintiff's appeal of that order.

Affirmed, in part, and dismissed, in part.